

**PART IV.**  
**AUTOMATIC STAY; DEBTOR'S DUTIES AND BENEFITS**

**4001-1. Motions For Relief From Stay.**

(a) **Procedure and Supporting Documents.** A motion for relief from stay shall be so titled and shall be accompanied by the declaration of an individual competent to testify which sets forth the factual basis for the motion. The motion shall describe the relief sought and shall advise the respondent to appear personally or by counsel at the preliminary hearing.

(b) **Cover Sheet.** Every motion for relief from stay shall be filed with a completed Relief From Stay Cover Sheet. Relief From Stay Cover Sheets shall be available in the Office of the Clerk.

(c) **Preliminary Hearings.** Unless otherwise ordered, motions shall be set for preliminary hearing not less than 15 days after service. Motions shall be served the same day they are filed or sent for filing.

(d) **Hearing Dates.** The Clerk shall make available a list of available hearing dates. It is the responsibility of the moving party to select a hearing date which satisfies the notice requirements of this rule.

(e) **Oral Testimony.** Unless otherwise ordered, no oral testimony will be received by the Court at any hearing on a motion for relief from stay.

(f) **Response.** A respondent will not be required to, but may, file responsive pleadings, points and authorities, and declarations for any preliminary hearing.

**(g) Inclusion of an Account Statement.**

(1) As to motions for relief from the automatic stay wherein the movant alleges that the debtor has failed to maintain post-petition payments on an obligation, the motion shall include a post-petition account statement and a declaration attesting to the statement's accuracy. Both documents shall be written in language comprehensible to a lay person, and shall include the following information:

a. a description of the post-petition obligations that have accrued and are unpaid;

b. all payments received post-petition;

c. the date each post-petition payment was received;

d. the date each post-petition payment was posted to the subject account, if different from the date received.

If, for any reason, the timing or amount of the last payment which fell due pre-petition is different from any payments which have accrued post-petition, the moving party must briefly state the reason for the change and whether the debtor was given written notice of the changed amount.

As to defaults in post-petition payments to a Chapter 13 trustee, a printout from the Chapter 13 trustee's on-line information system itemizing post-petition payments will suffice.

(2) If the motion for relief from the automatic stay is based upon a failure to make pre-petition payments, then the requirements for an account statement referenced in paragraph (g)(1)(a) through (d) shall extend to all pre-petition obligations that have accrued and are unpaid.

(3) If a moving party fails to comply with paragraphs (g)(1) or (2) of this rule, the court may, in its discretion, impose such monetary or nonmonetary remedies as it deems appropriate.

#### **Cross Reference**

See Fed. R. Bankr. P. 4001.

### **4002-1. Designation of Responsible Individual For Corporation or Partnership Debtor.**

Every corporate or partnership debtor or debtor-in-possession shall file with the Court an application and proposed order appointing a natural person to be responsible for the duties and obligations of the debtor or debtor-in-possession. The order shall identify such person by name and include the person's address, telephone number, and position within the organization. If the duties are to be divided among two or more individuals, the responsibilities of each shall be specified. The application and order shall be filed with the petition, or promptly thereafter.

### **4002-2. Obligations of Trustee Regarding Scheduled Consumer Debt.**

The trustee shall, pursuant to 11 U.S.C. §704(3), advise the debtor in writing of the debtor's obligations under 11 U.S.C. §521(2)(B) on the receipt of the statement of intention, or in any event, no later than the meeting of creditors pursuant to 11 U.S.C. §341.

### **4003-1. Exempt Property.**

(a) **Orders Setting Apart Exemptions.** If no objection to a claim of exemption has been made in a Chapter 7 case within the time provided in Fed. R. Bankr. P. 4003(b), the Court may, at any time, without a hearing and without reopening the case, enter an order approving the exemptions as claimed.

(b) **Spousal Exemption Waiver.** In a case where the spouse of the debtor is a nondebtor and the debtor wishes to elect the exemptions provided by California Code of Civil Procedure § 703.140(b), the debtor shall file the waiver referred to in California Code of Civil